

Tangible personal property transferred incident to the completion of an extended warranty will result in Use Tax liability by a serviceman based on the cost price of that tangible personal property. See 86 Ill. Adm. Code 140.301(b)(3) and 86 Ill. Adm. Code 140.141(c). (This is a GIL.)

August 18, 2004

Dear Xxxxx:

This letter is in response to your letter dated February 2, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

As of today we are updating our records on the above subject in every State where we respond to the administration of claims against Vehicle Service Contracts. Hence, to enable us to comply with applicable tax laws on the matter, we would like to request your cooperation in clarifying our queries, to wit

1. As dealers issuing and servicing the vehicle service contracts or warranty contracts, do we pay sales taxes on authorized repairs of covered vehicles specifically for parts, labor or deductible? If so please explain.
2. As transient dealers (repair shops) who have nothing to do with the contracts but do the authorized repairs on our customers' covered vehicles, do they pay sales tax on those repairs for parts and labor? If so why.

To assist us in understanding more about these sales taxes, kindly send us copies of applicable and recent tax laws, including registration requirements, if any.

#### **DEPARTMENT'S RESPONSE:**

For general information purposes, the Illinois sales and use tax system is unique because it codifies four separate taxes: The Retailers' Occupation Tax, (86 Ill. Adm. Code 130.101 et seq.), the

Use Tax, (86 Ill. Adm. Code 150.101 et seq.), the Service Occupation Tax, (86 Ill. Adm. Code 140.101 et seq.), and the Service Use Tax, (86 Ill. Adm. Code 160.101 et seq.).

The Retailers' Occupation Tax is what is commonly referred to in other locales as "sales" tax. However, the Retailers' Occupation Tax is not a sales tax, but rather an occupation tax. The Retailers' Occupation Tax is imposed on persons engaged in the business of selling tangible personal property at retail. The complement of the Retailers' Occupation Tax is the Use Tax, which is essentially a privilege tax imposed upon the privilege of using, in Illinois, tangible personal property purchased anywhere at retail. The current tax rate is 6.25% plus any local taxes if applicable.

The Service Occupation Tax is also an occupation tax, and has a complementary privilege tax known as the Service Use Tax. These service taxes are applicable to tangible personal property transferred by a serviceman as an incident to the service provided, as opposed to property being sold and purchased at retail. The tax is not on the service itself, but on the property being transferred.

When an item of tangible personal property is sold at retail, an express warranty from the manufacturer is often included in the selling price. This express warranty obligates the manufacturer to correct defects in materials and workmanship during a specified timeframe. When repairs are made under the terms of an express warranty, no tax is due and this is true whether the manufacturer makes the repairs or whether the manufacturer pays someone else to make the repairs. This is because the warranty (and any tangible personal property transferred under the warranty) was included as part of the retail selling price of the item and, as such, was subject to Retailers' Occupation Tax and Use Tax when the item was sold at retail. See subsection (b) of 86 Ill. Adm. Code 140.141.

Extended warranties are contracts to provide repairs for a particular item for a stated period of time after a manufacturer's express warranty has expired. An extended warranty is not included in the selling price of the item covered by the extended warranty and, for that reason, the selling price of the extended warranty is not subject to Retailers' Occupation Tax and Use Tax liability when the item is sold at retail. However, tangible personal property transferred incident to the completion of an extended warranty or maintenance agreement will result in Use Tax liability by the serviceman based on the cost price of that tangible personal property. See 86 Ill. Adm. Code 140.301(b)(3) and 86 Ill. Adm. Code 140.141(c).

In regards to extended warranties and maintenance agreements, the serviceman making the repair is required to pay Use Tax on the cost price of the tangible personal property (parts) transferred as an incident to the warranty repair work, not on the labor. This is true whether a dealer performs the repairs or whether a "repair shop" performs the repairs.

I hope this information is helpful. If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess  
Associate Counsel

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